

### **DRAWING AMENDMENTS**

Enclosed with this Amendment is a replacement drawing sheet containing amended Fig. 22. Applicant submits that the proposed amendment does not add any new matter, as the subject matter shown in Fig. 22 was already discussed in the original specification and Fig. 22 was added in Applicant's response to the first Office action.

## **REMARKS**

Reconsideration of the second Office action issued in connection with the above-identified patent application is requested in view of the foregoing amendments and the following remarks. Prior to entry of the above amendments, claims 1-20 were pending and stand rejected. In the above amendments, claims 1-2, 11-12, and 15-17 are amended.

In the Office action, the drawings were objected to under 37 C.F.R. 1.83(a) for failing to disclose the surgical tubing recited in several of the prior pending claims. As discussed in more detail herein, the amended claims no longer recite surgical tubing, and Applicant therefore submits that the drawing objection is moot. On another drawing-related matter, Applicant requests clarification from the Examiner whether the drawing amendment that was filed in Applicant's response to the first Office action was accepted. The second Office action does not discuss Applicant's prior drawing amendment, in which Fig. 22 was added. However, Applicant notes that the reference numerals presented in Fig. 22 and discussed in the previously amended portion of the specification need to be updated so as not to conflict with other reference numerals used in the present application. Accordingly, Applicant is submitting a replacement sheet containing Fig. 22 with updated reference numerals, and Applicant is amending the paragraph of the specification that begins on page 8, line 20, to reference the updated reference numerals. Applicant submits that the amendments do not add new matter to the application, for at least the reasons discussed previously in Applicant's response to the first Office action.

Claims 1-20 stand rejected under 35 U.S.C. § 112, first paragraph, for containing new matter. Specifically, prior pending claims 1 and 11 recite that “the water is selectively removed from the cavity” and that “a simple energy storage device is at least partially contained within the internal cavity.” Applicant requests reconsideration of the new matter rejection in view of amended claims 1 and 11. Amended claims 1 and 11 no longer recite that the simple energy storage device is at least partially contained within the internal cavity, and as such, Applicant submits that this portion of the new matter rejection is moot. With regard to the removal of water from the internal cavity, Applicant submits that this subject matter is disclosed in at least the incorporated subject matter of U.S. Patent No. 5,514,023, in Fig. 22, and in original claim 1. Accordingly, Applicant requests reconsideration and withdrawal of this new matter rejection because the present disclosure includes a discussion that water may be added and selectively removed from an internal cavity within the body of the toy.

Claims 1-20 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, and as expressed in the Office action, claims 1 and 11 stand rejected because it is not clear how a simple energy storage device launches the toy and whether the internal cavity is in communication with the at least one opening in the body through which the water is selectively removed from the toy. Applicant requests reconsideration of the indefinite rejection relating to launching the toy with a simple energy storage device because the specification and incorporated subject matter discuss the use of a simple energy device, such as an elastic band, to launch the toy in situations in which a user elects not to launch the toy with a throwing motion made by the user’s hands. The use of an elastic band or similar

simple energy storage device is discussed in the present application, such as in the paragraph beginning on page 8, line 17. Applicant requests reconsideration of the indefinite rejection relating to the toy's body containing a fillable internal cavity to allow the buoyancy of the toy to be adjusted, such as through the removal of water from the cavity through one or more openings. For example, Applicant refers the Examiner to at least page 2, lines 18-19; page 9, lines 2-3; page 22, lines 13-15.

Claims 1-2, 8-12, and 18-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,181,272 to Gibson, U.S. Patent No. 3,242,613 to Schwartz, and U.S. Patent No. 3,466,798 to Speers. As expressed in the Office action, elements 12, 69 or 36, and 32 are construed to be the trajectory stabilizing structure of Gibson, Schwartz, and Speers, respectively, and elements 30 and 31, 61 and 32 or 62, and 38 are construed to be the simple energy storage device of Gibson, Schwartz, and Speers, respectively. Furthermore, with respect to claims 9 and 19, the Examiner has taken the position that the trajectory stabilizing structure is capable of being removed and reattached.

Claims 3-7 and 13-17 stand rejected under 35 U.S.C. § 103 as being obvious over Gibson, Schwartz, or Speers. As the Examiner correctly recognized, none of the cited references disclose the claims specific gravity ranges, the use of non-radial fins, the use of trajectory stabilizing structures that extend in non-radial directions, or the use of a plurality of fins having different sizes and/or shapes. However, the Examiner's position is that it would have been obvious to add the claimed features of claims 3-7 and 13-17 to the devices of Gibson, Schwartz, or Speers to simulate or facilitate the maneuvers of the toys.

Applicant has studied the cited references in view of the reasons expressed in the Office action. Applicant respectfully requests reconsideration of the rejections and traverses the rejections. However, each of claims 1 and 11 has been amended by the above amendments, as discussed below, and reconsideration of the rejections is requested in view of the amended claims.

Amended claim 1 recites, amongst other subject matter, that the toy is a non-motive toy. Support for this amendment is found throughout the specification with reference to the toy needing to be launched by a user throwing or otherwise propelling the toy through a body of water, or alternatively, through the use of a simple energy storage device. The cited references are all directed to motive toys, namely, toys that include a motor. Furthermore, Applicant submits that propellers that are driven by electric motors are not simple energy storage devices. Accordingly, Applicant requests reconsideration and withdrawal of the rejection of amended claim 1. Claims 2-10 depend from amended claim 1 and therefore should be allowable when claim 1 is allowed.

Amended claim 11, recites a hydrodynamic underwater projectile toy that includes a trajectory stabilizing structure with at least a pair of drag-producing surfaces that extend from a tail portion of the toy, with claim 11 further reciting that the drag-producing surfaces are adapted to provide a non-linear steering moment to the toy. The cited references disclose electrically powered toys that fail to include the recited pair (or more) of drag-producing surfaces that extend from a tail section of the toy and which are adapted to provide a non-linear steering moment to the toy during underwater travel of the toy. Applicant submits that none of the cited references disclose this subject matter. Accordingly, Applicant requests

reconsideration and withdrawal of the rejection of amended claim 11. Claims 12-20 depend from claim 11 and therefore should be allowed when claim 11 is allowed.

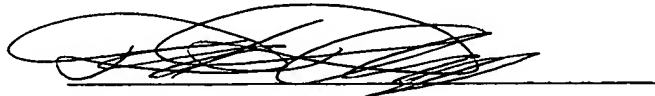
For the purpose of completeness, Applicant respectfully submits that the subject matter of claims 3-7 and 13-17 is not rendered obvious by the cited references and that the cited references fail to disclose or suggest the subject matter recited in the pending claims. For example, the cited references are completely silent about removing the rudder or other steering portion of the toy, much less having this portion be selectively interchangeable. Similarly, the cited references are completely silent about having stabilizer structures having a plurality of drag-producing surfaces, such as to produce steering or righting moments, much less having such structures with different sizes and shapes. Applicant submits that the required prima facie case of obviousness has not been made to these claims. Moreover, Applicant submits that the claims should be allowable and are not obvious over the disclosures of the cited references. Because this subject matter is recited in dependent claims, Applicant believes that the rejections of these claims are now moot. However, reconsideration of the rejections is requested should the corresponding independent claims not be allowed upon consideration of this response.

With the entry of the above amendments, and for the reasons stated, Applicant submits that all of the issues raised in the second Office action have been addressed and overcome. If the Examiner identifies any remaining issues, or if there are any questions that may be resolved in a telephone interview to advance prosecution of this application, Applicant requests that the Examiner contact Applicant's undersigned attorney at the number

listed below so that any questions or remaining issues may be discussed, and hopefully resolved, and thereby expedite prosecution of the present application.

Respectfully submitted,

KOLISCH HARTWELL, P.C.

A handwritten signature in dark ink, appearing to read 'David S. D'Ascenzo', is written over a horizontal line.

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